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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,242	01/19/2005	Eleanor Bernice Ridley	HP/15-22715/A/MA 2224/PCT	6482
324 7590 10/16/2009				
JoAnn Villamizar Ciba Corporation/Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591				
EXAMINER				
ROGERS, JAMES WILLIAM				
ART UNIT		PAPER NUMBER		
1618				
NOTIFICATION DATE		DELIVERY MODE		
10/16/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/523,242

**Applicant(s)**

RIDLEY ET AL.

**Examiner**

JAMES W. ROGERS

**Art Unit**

1618

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 11-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicants amendments to the claims filed 06/11/2009 have been entered. Any objection/rejection from the previous office action filed 02/13/2009 not addressed in the action below has been withdrawn.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5-8 and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Robinson et al. (EP 247,774 A2), for the reasons set forth in the previous office action filed 07/30/2008.

#### ***Response to Arguments***

Applicant's arguments filed 06/11/2009 have been fully considered but they are not persuasive.

Applicants assert that Robinson no longer reads on their claimed invention since it requires a cosmetically functional ingredient.

The examiner respectfully disagrees. A cosmetically functional ingredient is not seen as very limiting by the examiner in that any ingredient that was used in a cosmetic composition meets this limitation. Robinson teaches the use of surfactants in the water-in-oil emulsions described; a surfactant is an ingredient common in cosmetic personal care type of compositions, as evidenced by the Green reference cited previously and

below, which teaches cosmetic dispersions containing surfactants. See page 4 lin 25-  
pag 5 lin 20. To meet this limitation it must only be capable of being used cosmetically  
and such surfactants are clearly at least capable thereof.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can  
be found in a prior Office action.

Claims 1-9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable  
over Green et al. (US 6,365,656) in view of Cockcroft et al. (WO 02/40622) in view of  
Lentini et al. (US 5,665,368), for the reasons set forth in the previous office actions filed  
01/11/2008 and 07/30/2008.

***Response to Arguments***

Applicant's arguments filed 06/11/2009 have been fully considered but they are  
not persuasive.

Applicants assert that Green teaches that the monomers are dispersed in the  
hydrophobic liquid phase whereas their own current claim limitations require that the  
monomers are dispersed in an aqueous phase.

The relevance of this assertion is unclear. Green specifically discloses at column  
7 lines 9-27 that the reverse phase emulsion is prepared by adding one **aqueous**  
ethylenically unsaturated monomer into a hydrophobic liquid with sufficient agitation to  
form a stable emulsion. Thus the procedure of Green teaches the same technique  
claimed by applicants in that it adds an aqueous solution containing the monomers to a  
hydrophobic phase which forms an emulsion. Furthermore Green specifically recites

that the monomer blend must be water soluble and the hydrophobic liquid must have substantially no solvating effect on the polymer. See col 5 lin 4-17. Applicants claims at least as currently amended do not preclude the method of Green. A reverse or inverse emulsion polymerization takes place when an aqueous solution of a hydrophilic monomer is emulsified in a nonpolar organic solvent. See definition within Odian, Principles of polymerization page 367. Note that the monomer is in an aqueous phase (water) and then added to the nonpolar organic solvent. Thus one of ordinary skill in the art would have envisaged that when Green discussed making the polymers by reverse phase polymerization the monomer was already dispersed in an aqueous phase and added to the non-polar organic phase.

Applicants further contend that while Crocoft teaches substituted N,N-dimethyl acrylamides the reference only uses these monomers in the context of solution polymerization and there would be no expectation of success of using these monomers in Green who teaches emulsion polymerization.

The examiner respectfully disagrees. As applicants are already aware the secondary reference Crocoft was used only for its disclosure within on substituted N,N-dimethyl acrylamides and the reference does not have to teach all of applicants claimed limitations on its own merit. Since the N,N-dimethyl acrylamides of Crocoft are structurally very similar to the methacrylamides of Green one of ordinary skill in the art would have a reasonable expectation of success in making such a substitution.

### ***Conclusion***

No claims are allowed at this time.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James W. Rogers, Ph.D. whose telephone number is (571) 272-7838. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on (571) 271-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael G. Hartley/

Supervisory Patent Examiner, Art Unit 1618